

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2009 DEC 15 AM 9:21
RICHARD H. B. ADAMS, CLERK

Jkt D.C.

STATE OF TENNESSEE, *ex rel.*)

ROBERT E. COOPER, JR.,)
ATTORNEY GENERAL and)
REPORTER,)

Plaintiff,)

v.)

Case No. _____

MATTEL, INC., a Delaware)
Corporation, and FISHER PRICE, INC.,)
a Delaware corporation,)

Defendants.)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

1. This civil law enforcement action is brought in the name of the State of Tennessee ("State"), by and through Robert E. Cooper, Jr., the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 8-6-109, 47-18-108, and 47-18-114, and all common law powers and duties of the Attorney General, on behalf of Mary Clement, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Division"), having reason to believe that Mattel, Inc., a Delaware corporation ("Mattel"), and Fisher Price, Inc., a Delaware corporation ("Fisher Price")(collectively referred to as "Defendants"), have violated and/or are continuing to violate the Tennessee Consumer

Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, has requested that this civil action against Defendants be commenced by the Attorney General. The Attorney General brings this action in the public interest against Defendants for manufacturing and/or selling in whole or in part or into the State of Tennessee children's toys containing excessive amounts of lead. The State seeks an injunction prohibiting Defendants and persons acting in concert with them from committing unfair or deceptive acts or practices in the course of manufacturing children's products, and in the course of selling and/or offering to sell children's products in or into the State of Tennessee.

II. JURISDICTION AND VENUE

2. This action is brought for and on behalf of the Division of Consumer Affairs of the Department of Commerce and Insurance by Robert E. Cooper, Jr., the Tennessee Attorney General and Reporter, pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* This Court exercises jurisdiction over the subject matter of this Complaint pursuant to the provisions of Tenn. Code Ann. §§ 47-18-108 and 47-18-114.

3. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because it is a county in which Defendants conducts or has conducted business by offering for sale and/or otherwise engaged in trade or commerce at all times relevant to the Complaint in Davidson County.

4. Defendant waived ten (10) days notice of intent to sue under Tenn. Code Ann. § 47-18-108(a)(2).

III. PARTIES

5. Defendant Mattel, Inc. (“Mattel”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 333 Continental Boulevard, El Segundo, California 90245-5012.

6. Defendant Fisher-Price, Inc. (“Fisher-Price”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 636 Girard Avenue, East Aurora, NY 14052-1824. Fisher-Price, Inc. is a subsidiary of Mattel, Inc.

7. Plaintiff, State of Tennessee ex rel. Robert E. Cooper, Jr., is the duly appointed Attorney General of Tennessee and, as such, has broad statutory and common law powers. The Attorney General is authorized to enforce the Tennessee Consumer Protection Act of 1977 (“Act”), Tenn. Code Ann. § 47-18-101 *et seq.* Pursuant to Tenn. Code Ann. § 47-18-108, relief available includes, but is not limited to, injunctive relief, attorneys’ fees, and civil penalties.

IV. BACKGROUND

Upon information and belief, the State of Tennessee alleges as follows:

8. Lead is highly toxic, particularly to young children.
9. There is no safe level of lead in the body.
10. Even very small amounts of lead can cause serious neurological damage, including drops in IQ and, in the long term, behavioral problems.
11. Higher exposures to lead cause acute effects, including seizures, coma or death.
12. Lead exposure is cumulative such that multiple sources of exposure compound the negative health effects in children.

13. One of the sources of exposure to lead is products, or pieces of products, containing lead, which young children can mouth or swallow.

14. The amount of lead in a product is measured in parts per million (ppm) of total lead content, which can also be expressed as a percentage.

15. At the time the recalled products at issue in this Complaint were manufactured, distributed, and otherwise introduced into trade or commerce in Tennessee, a federal standard for lead content in surface coatings of children's products set the maximum allowable lead level at 600 ppm.

16. Even the 600 ppm standard is high, given the fact that it was originally premised on outmoded assumptions about how much lead can be present in children's blood without significant health effects, and did not take into account the existence of multiple sources of exposure to lead, such as housing, soil, and children's products.

V. FACTS

Upon information and belief, the State of Tennessee alleges as follows:

17. On August 2, 2007, Defendant Fisher-Price voluntarily recalled in the United States approximately 967,000 units of Fisher-Price children's toys manufactured in China between April 19, 2007, and July 6, 2007, for excessive levels of lead in surface paints.

18. On August 14, 2007, Defendant Mattel voluntarily recalled in the United States approximately 253,000 units of children's toys manufactured in China for excessive levels of lead on the product surface.

19. On September 4, 2007, Defendant Mattel voluntarily recalled in the United States approximately 675,000 units of children's toys manufactured in China between September 30, 2006, and August 20, 2007, for excessive levels of lead in surface paints.

20. Also on September 4, 2007, Defendant Fisher-Price voluntarily recalled in the United States almost 100,000 units of children's toys manufactured in China for excessive levels of lead in surface paints.

21. On October 25, 2007, the defendant Fisher-Price, voluntarily recalled in the United States approximately 38,000 units of children's toys manufactured in China, for excessive levels of lead in surface paint on children's toys.

22. Defendants manufactured and caused to be introduced into trade and commerce in Tennessee children's toys with surface coatings of lead-based/lead-containing paint that posed an unreasonable risk of injury to children. Levels detected in samples of concern for this case exceeded 600 ppm. Many samples were over 1000 ppm, several samples tested at over 10,000 ppm, and some over 50,000 ppm.

23. Defendants caused or allowed "Certificate[s] of Compliance" to be issued by testing laboratories for the recalled toys by that were marked as valid for periods of time up to 12 months. In general, each certificate of compliance, indicating compliance with standards for lead and other heavy metals as well as other safety requirements, appears to be based on a single product testing event. The Certificates of Compliance were deceptive and/or misleading in that they purported to be valid for a future period of time for which Defendants did not have adequate auditing and process control of manufacturing facilities and/or testing of surface coatings and/or finished products to assure compliance for that period.

VI. CAUSE OF ACTION:

TENNESSEE CONSUMER PROTECTION ACT VIOLATIONS

24. Tennessee hereby realleges and incorporates herein paragraphs 1 through 23, above.

25. The Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq*, prohibits unfair or deceptive acts or practices in trade or commerce.

26. Defendants' manufacture, distribution, and/or introduction into trade or commerce of children's products containing excessive amounts of lead in or into Tennessee was an unfair and deceptive practice in violation of the Tennessee Consumer Protection Act.

27. Defendants have further engaged in unfair and deceptive practices in violation of Tennessee Consumer Protection Act of 1977, including but not limited to Tenn. Code Ann. § 47-18-104(a) and (b)(27) by:

- a. Introducing products they manufactured into trade and commerce in Tennessee without adequate safeguards and testing to ensure product safety;
- b. Failing to adequately investigate circumstances indicating a lack of process control in the manufacturing and testing of children's products; and
- c. Causing or allowing compliance certificates to be issued concerning lead levels in surface coatings of children's products without sufficient basis to ensure compliance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, pursuant to the Act, the Attorney General's general statutory authority, the Attorney General's authority at common law and this Court's equitable powers, prays:

A. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116 and no court costs or litigation fees or costs of any sort be taxed against the State pursuant to Tenn. Code Ann. § 47-18-116;

B. That process issue and be served upon Defendants requiring Defendants to appear and answer this Complaint;

C. That this Court adjudge and decree that Defendants have each engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977;

D. That, pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and (a)(4), this Court permanently enjoin Defendants, their agents, employees, and all other persons and entities corporate or otherwise in active concert or participation with any of them, from engaging in the aforementioned unfair or deceptive acts or practices which violate the Tennessee Consumer Protection Act of 1977, including but not limited to, prohibiting Defendants from selling in or into Tennessee children's products containing excessive lead, and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108.

E. That this Court order Defendants to pay civil penalties of \$1,000 for each and every violation of Tenn. Code Ann. § 47-18-108(b)(4);

F. That this Court enter judgment against Defendants and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, expert and other witness fees, as provided by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4);

G. That all costs in this case be taxed against Defendants pursuant to Tenn. Code Ann. § 47-18-116; and

H. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

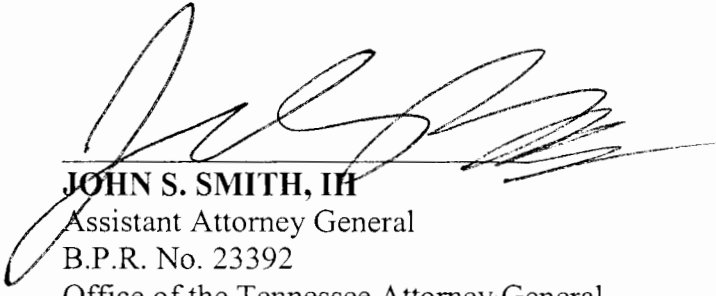
FOR THE STATE OF TENNESSEE

A handwritten signature in black ink, appearing to read "RE Cooper", written over a horizontal line.

ROBERT E. COOPER, JR.

Attorney General and Reporter

B.P.R. No. 10934



JOHN S. SMITH, III

Assistant Attorney General

B.P.R. No. 23392

Office of the Tennessee Attorney General
Consumer Advocate and Protection Division

P.O. Box 20207

Nashville, Tennessee 37202-0207

Phone: (615) 741-1671

Facsimile: (615) 532-2910

Approved by:

A handwritten signature in cursive script, reading "Mary Clement". The signature is written in black ink and is positioned above a horizontal line.

MARY CLEMENT

Director

Division of Consumer Affairs

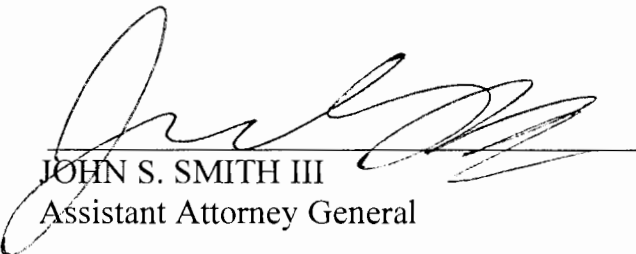
CERTIFICATE OF SERVICE

I, JOHN S. SMITH III, Assistant Attorney General, do hereby certify that on December 15, 2008, I caused a copy of the foregoing COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF, to be placed in the United State Mail, with sufficient postage to be delivered to the undersigned counsel for Defendants as follows:

H. Buckley Cole
Greenebaum Doll & McDonald
Suite 1225
315 Deaderick Street
Nashville, TN 37238
615 760-7130
BPR No. 011811

and

Antonio F. Dias
Jones Day
One Mellon Center
500 Grant Street, Suite 4500
Pittsburgh, PA 15219



JOHN S. SMITH III
Assistant Attorney General

EXHIBIT C

PAID

2008 DEC 15 AM 9:21

RICHARD H. CLARK, CLERK

D.C.

Total Payment
\$12,000,000

		Massachusetts	Arizona
Even Distribution (65%)	\$7,800,000	\$190,244	\$190,244
Percentage of Population of Participating States (15%)		2.84%	2.79%
	\$1,800,000	\$51,166	\$50,286
Tiered Distribution Among EC States (20%)		16%	10.50%
	\$2,400,000	\$384,000	\$252,000
Total	\$12,000,000.00	\$625,410	\$492,530

Executive Committee

Florida	Illinois	Kentucky	Missouri	Ohio
\$190,244	\$190,244	\$190,244	\$190,244	\$190,244
8.04%	5.66%	1.87%	2.59%	5.05%
\$144,788	\$101,960	\$33,648	\$46,634	\$90,968
10.50%	10.50%	10.50%	10.50%	10.50%
\$252,000	\$252,000	\$252,000	\$252,000	\$252,000
\$587,032	\$544,204	\$475,892	\$488,878	\$533,212

Pennsylvania	Vermont	Alabama	Alaska	Arkansas	Colorado
\$190,244	\$190,244	\$190,244	\$190,244	\$190,244	\$190,244
5.48%	0.27%	2.04%	0.30%	1.25%	2.14%
\$98,630	\$4,928	\$36,713	\$5,422	\$22,489	\$38,567
10.50%	10.50%				
\$252,000	\$252,000				
\$540,874	\$447,172	\$226,957	\$195,666	\$212,733	\$228,811

Connecticut	Delaware	Hawaii	Idaho	Iowa	Kansas
\$190,244	\$190,244	\$190,244	\$190,244	\$190,244	\$190,244
1.54%	0.38%	0.57%	0.66%	1.32%	1.22%
\$27,784	\$6,860	\$10,181	\$11,895	\$23,704	\$22,022
\$218,028	\$197,104	\$200,425	\$202,139	\$213,948	\$212,266

Participating States					
Maryland	Michigan	Minnesota	Mississippi	Montana	Nebraska
\$190,244	\$190,244	\$190,244	\$190,244	\$190,244	\$190,244
2.48%	4.44%	2.29%	1.29%	0.42%	0.78%
\$44,571	\$79,900	\$41,233	\$23,155	\$7,599	\$14,078
\$234,815	\$270,144	\$231,477	\$213,399	\$197,843	\$204,322

Participating States

Nevada	New Jersey	New Mexico	New York	North Carolina	North Dakota
\$190,244	\$190,244	\$190,244	\$190,244	\$190,244	\$190,244
1.13%	3.83%	0.87%	8.51%	3.99%	0.28%
\$20,351	\$68,906	\$15,627	\$153,090	\$71,882	\$5,075
\$210,595	\$259,150	\$205,871	\$343,334	\$262,126	\$195,319

Oklahoma	Oregon	Rhode Island	South Dakota	Tennessee	Texas
\$190,244	\$190,244	\$190,244	\$190,244	\$190,244	\$190,244
1.59%	1.65%	0.47%	0.35%	2.71%	10.54%
\$28,696	\$29,729	\$8,392	\$6,316	\$48,842	\$189,635
\$218,940	\$219,973	\$198,636	\$196,560	\$239,086	\$379,879

				Totals
Washington	West Virginia	Wisconsin	Wyoming	
\$190,244	\$190,244	\$190,244	\$190,244	\$7,800,000
2.85%	0.80%	2.47%	0.23%	100.00%
\$51,314	\$14,375	\$44,438	\$4,148	\$1,800,000
				\$2,400,000
\$241,558	\$204,619	\$234,682	\$194,392	\$12,000,000